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Part A—An Overview of the ORV Act

4.1 Introduction

The Off-Road Recreation Vehicle Act* is codified as Part 811 of the Natural Resources and Environmental Protection Act (NREPA). MCL 324.81101 et seq; MSA 13A.81101 et seq. It was enacted in 1995 as a replacement for the previous Off-Road Recreational statute that had been codified as Chapter 16 of the Michigan Vehicle Code. *See* MCL 324.90106; MSA 13A.90106, repealing MCL 257.1601 to .1626; MSA 9.3300(1) to (26), effective May 24, 1995. All of the provisions that had been in the Vehicle Code were renumbered and then codified as Part 811 of the NREPA. The Legislature made no substantive changes to the contents of those provisions. *See* MCL 324.107; MSA 13A.107, of the NREPA which states:

“It is the intention of the legislature that editorial changes in the language of statutes codified as parts

*For simplicity purposes, this statute will be referred to throughout this chapter as the ORV Act, rather than Part 811 of the Natural Resources and Environmental Protection Act.

*See DNR Note at Section 4.3 for more information about Michigan's ORV trail system.

*See Section 4.10 for a more detailed discussion of the licensing requirements of the ORV Act.

within this act not be construed as changes to the meanings of those statutes.”

The ORV Act requires all ORVs (except those operated on private property) to be operated on a statewide ORV trail system maintained by the Department of Natural Resources. MCL 324.81127; MSA 13A.81127. The Upper Peninsula of Michigan is exempted from the ORV trail system requirement. MCL 324.81126; MSA 13A.81126.*

Copies of maps of ORV trails must be given to each person who obtains an ORV certificate of title issued by the Secretary of State. MCL 324.81123(5); MSA 13A.81123(5). Additional copies must be made available for distribution at each county sheriff's office and each DNR field office. *Id.*

The ORV trail system is funded from the licensing fees collected by the DNR. MCL 324.81117; MSA 13A.81127. All ORVs, except those used solely on private property, must be licensed with the DNR. MCL 324.81102(2); MSA 13A.81102(2).*

The offenses established by the ORV Act can be grouped into the following ten categories:

- Titling requirements.
- Licensing requirements.
- Equipment requirements.
- Operation of ORVs on public highways and streets.
- Operation of ORVs in places where ORVs are prohibited.
- Operation of ORVs by children less than 16 years of age.
- Operation of ORVs in a careless, unsafe or otherwise prohibited manner.
- Operation of ORVs at a greater than minimum speed at prohibited locations.
- Operation of ORVs while intoxicated or impaired.
- Operation of ORVs after operating privileges have been suspended.

Each of these categories of offences is discussed in more detail in Part B of this chapter.

4.2 Definitions in ORV Act

- “‘ORV’ or ‘vehicle’ means a motor driven off-road recreational vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain.” MCL 324.81101(m); MSA 13A.81101(m).

- “ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle[s], an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle or other means of transportation deriving motive (sic) power from a source other than muscle or wind.” *Id.*
- “ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility [oil or gas]... company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.” *Id.*
- “‘ATV’ means a 3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.” MCL 324.81101(a); MSA 13A.81101(a).
- “‘Designated’ means posted open for ORV use with appropriate signs by the department.” MCL 324.82101(d); MSA 13A.82101(d).
- “‘Forest road’ means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive 4-wheel conventional vehicle designed for highway use, except an interstate, state, or county highway.” MCL 324.81101(e); MSA 13A.81101(e).
- “‘Forest trail’ means a designated path or way capable of travel only by a vehicle less than 50 inches in width.” MCL 324.81101(f); MSA 13A.81101 (f).
- “‘Highway’ means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.” MCL 324.81101(g); MSA 13A.81101(g).
- “‘Operate’ means to ride in or on, and be in actual physical control of the operation of an ORV.” MSA 324.81101(k); MSA 13A.81101(k).

Other definitions have been established through the adoption of DNR Administrative Rule 299.334(a), (c), (d) and (i), which state as follows:*

“(a) ‘Designated area’ means an area that has been properly signed on-the-ground for cross-country ORV use.”

“(c) ‘Designated route’ means forest roads which have been properly signed on-the-ground for ORV use.”

“(d) ‘Designated trail’ means a 1-track path or way capable of travel by a 2- or 3-wheel vehicle less than

*See section 4.7 for a discussion of the rule making authority of the DNR.

40 inches in width which has been properly signed on-the-ground for ORV use.”

“(i) “Properly signed on-the-ground” means that signs have been posted by the department of natural resources to mark the location or boundary of a designated trail, route, or area.”

DNR Note: In Michigan’s Lower Peninsula, the ORV system is composed of designated trails, designated routes, and designated areas (scramble areas). In addition, the ORV Act allows local units of government to pass ordinances establishing access routes along streets and highways under their jurisdiction. *See* MCL 324.81131; MSA 13A.81131.

Michigan’s Upper Peninsula is open to the use of ORVs unless a trail, route, or area is posted closed. However, cross-country travel without the benefit of a forest trail or forest road is prohibited.

Lands administered by the DNR fall into the following classifications:

- State forests are located primarily in the northern half of the Lower Peninsula and the Upper Peninsula. These properties are not distinguished by boundary signing; may be in very large blocks or in small, dispersed parcels; and may contain private holdings within the state forest. State forest lands are administered by the Forest Management Division of DNR.
- State parks and recreation areas are located throughout the state. With the exception of some recreation areas, these lands are generally contiguous properties; signed on their boundaries; more intensively managed; and apply more restrictions to ORV use. These lands are administered by the Parks and Recreation Bureau of DNR.
- State game areas are primarily located in the southern portion of the Lower Peninsula. These lands may be very large parcels or small mini-game areas; may or may not be signed on their boundaries depending on management goals; and apply ORV restrictions similar to those found in parks and recreation areas. These lands are administered by the Wildlife Bureau of DNR.
- Public access sites, often referred to as public boat launches, are located throughout Michigan. The majority of public access sites are small, discrete parcels; signed on their boundaries; and generally ORV use is only permitted on access roads and in parking areas. These lands are administered by the Parks and Recreation Bureau of DNR.

4.3 Authority of District Court Magistrates Under ORV Act

A. Misdemeanors Up to 90 Days

MCL 600.8511(c); MSA 27A.8511(c), of the Revised Judicature Act provides that district court magistrates, when authorized by the chief judge, have the jurisdiction and duties to arraign and sentence upon pleas of guilty or nolo contendere for misdemeanor violations of the ORV Act, when the maximum penalty does not exceed 93 days in jail.

However, beginning on October 1, 1999, this jurisdiction does not include authority to take pleas or sentence defendants convicted of a violation of MCL 324.81134 and 81135; MSA 13A.81134 and 81135, or a substantially corresponding local ordinance. For these ORV drunk driving offenses,* the magistrate has limited jurisdiction to arraign the defendant and set bail. MCL 600.8511(c); MSA 27A.8511(c).

*See section 4.17 for a summary of these offenses.

B. State Civil Infractions

MCL 600.8512(1); MSA 27A.8512(1), states that:

“a district court magistrate may hear and preside over... civil infraction actions pursuant to... section 8819 [of the Revised Juricature Act]. In exercising the authority conferred by this subsection, the magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law. If the defendant is determined to be responsible for a civil infraction, the magistrate may impose the civil sanctions authorized [by statute].”

Section .8819, in turn, describes the procedures to follow at informal hearings in state civil infraction actions. MCL 600.8819(1); MSA 27A.8819(1) provides as follows:

“(1) an informal hearing shall be conducted by a district court magistrate, if authorized by the judge or judges of the district court ... or a municipal court. A district court magistrate may administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. The judge or district court magistrate shall conduct the informal hearing in an informal manner so as to do substantial justice according to the rules of substantive law, but is not bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There shall not be a jury at an informal hearing. A verbatim record of an informal hearing is not required.”

4.4 Authority of DNR Enforcement Officers Under ORV Act

There are two types of DNR enforcement officers who currently have the authority to issue appearance tickets and make arrests for violations of the ORV Act.

- 1) DNR conservation officers are vested with all the powers and duties conferred upon peace officers. *See* MCL 324.1501; MSA 13A.1501, which states as follows:

“Conservation officers appointed by the director of the department of natural resources and trained and certified pursuant to the Michigan law enforcement officers training council act of 1965, Act. No. 203 of the Public Acts of 1965, being sections 28.601 to 28.616 of the Michigan Compiled Laws, are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers by the general laws of this state.”

- 2) State park and recreation enforcement officers are granted authority to issue appearance tickets and make arrests for violations of the ORV Act in state parks and recreation areas. *See* MCL 324.74124(1) to (3); MSA 13A.74124(1) to (3).

DNR Note: Michigan conservation officers are fully trained and certified peace officers having been required to complete 14 weeks of basic police training. They are authorized to enforce the general criminal laws of the state, and their jurisdiction is statewide.

State park and recreation enforcement officers are deemed to be peace officers only for the purpose of enforcing specific laws, rules, and orders when they are within the boundaries of a state park or recreation area. By agreement with the Commission on Law Enforcement Standards, these officers must undergo an abbreviated basic police academy.

Additionally, in 1998, the legislature enacted 1998 PA 418, which created Part 831 of the NREPA. MCL 324.83107; MSA 13A.83107, of Part 831 states that the DNR may commission state forest officers to enforce rules and laws on state forest lands. The DNR currently is in the process of defining the enforcement responsibilities of state forest officers, and it is likely that they will be involved in ORV enforcement in the future. Their training will be commensurate with that provided to state park and recreation enforcement officers, and their jurisdiction will be restricted to state forest lands.

4.5 Enforcement of ORV Act on Federal Property

The Michigan ORV Act is enforced in the three national forests in Michigan. This includes titling, licensing, equipment requirements, and general operating restrictions. In cases of individuals operating an ORV in a closed area, road, or trail, the violation cited will be Section .81133(r), operating in a manner contrary to operating regulations on public lands. Michigan conservation officers are the primary enforcing agency of the Act on these lands. Law enforcement officers and other staff employed by the federal government are not authorized to enforce the Michigan ORV Act, but do cite individuals into federal court for violations of federal land use regulations.

DNR Note: The Huron-Manistee National Forest is located in the northern portion of the Lower Peninsula. In this forest, trails are “closed unless posted open” to ORV use. ORVs licensed as such may use trails, roads and areas designated and signed for ORV use. Vehicles licensed under the Michigan Vehicle Code may use all forest roads. The Huron-Manistee National Forest may be reached at 1-800-821-6263.

The Hiawatha National Forest is located in the eastern and central portions of the Upper Peninsula. The Ottawa National Forest is situated in the northwest corner of the Upper Peninsula. In both of these forests, roads marked with a vertically numbered signpost are open to ORV use. All roads marked with a horizontally numbered signpost are closed unless otherwise posted open. In the Ottawa National Forest, trails are generally open to ORV use unless posted closed. The Hiawatha National Forest may be reached at 1-800-786-4062 and the number for the Ottawa National Forest is 1-906-932-1330.

4.6 Enforcement of ORV Act on Private Property

All of the offenses within the ORV Act apply to ORVs operated on both private property and public property. The only three exceptions are as follows:

- Licensing requirements do not apply to ORVs that are operated solely on private property. *See* Section 4.10, *infra*.
- Children between 10 and 12 years of age may operate 4-wheeled ATVs if they are on private property owned by a parent or legal guardian. *See* Section 4.14, *infra*.
- Children under 10 years of age may operate a 4-wheeled ATV on private property while performing farm related work activities. *See* Section 4.14, *infra*.

DNR Note: The Law Enforcement Division believes that the primary responsibility of Michigan’s conservation officers in the area of ORV enforcement is the protection of the natural resources and the safe-guarding of the health and safety of individuals utilizing public lands for recreation. General enforcement of the ORV Act is focused on public lands. Conservation officers do enforce the ORV Act on private property when it is necessary to protect the safety and welfare of an individual in imminent danger, i.e., where a child is involved or there is a reasonable suspicion the operator is under the influence, or where damage is being done to public natural resources, i.e., damage to streams or regulated wetlands.

Conservation officers also respond to private property cases of reported trespass. *See* MCL 324.81133(i); MSA 13A.81133(i), for the prohibition against the operation of an ORV on the private property of another person. Section 81133(i) is quoted at section 4.13, *infra*.

4.7 Rule Making Authority of DNR

The department is given authority to create Administrative Rules and Director’s Orders for the regulation of ORVs. This authority is contained in MCL 324.504; MSA 13A.504, which states:

“The department shall promulgate rules for the protection of the lands and property under its control against wrongful use or occupancy as will ensure the carrying out of the intent of this part to protect the lands and property from depredations and to preserve occupancy. This section does not allow the department to promulgate a rule that applies to commercial fishing except as otherwise provided by law. The department shall issue orders necessary to implement rules promulgated under this section. These orders shall be effective upon posting. ***A person who violates a rule promulgated under this section or an order issued under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.***” (Emphasis added).*

*By comparison, a violation of a rule enacted pursuant to the Marine Safety Act is a misdemeanor. *See* MCL 324.80171; MSA 13A.80171.

DNR Note: To date, the most significant ORV rule promulgated by the department is Rule 299.331(j), which requires all ORVs to be operated on designated roads, trails, routes, or areas. See Section 4.13(C), *infra*. The other ORV rules promulgated by the department deal with the locations where decals must be placed on vehicles, and the definitions of designated areas, designated routes, and designated trails. The definitions are contained at Section 4.2, *supra*, and the ORV decal requirements are contained at Section 4.10, *infra*.

Currently, the administrative rules governing conduct on state-owned lands are categorized according to the type of state land involved:

- The rules for public access sites are R 299.301 through R 299.303.
- The rules for state parks and recreation areas are R 299.321 through R 299.328.
- The rules for state lands other than parks and recreation areas (state forests and most game areas) are R 299.331 through R 299.335.

These rules are not limited to the use of ORVs on these lands. They cover a broad spectrum of prohibited behaviors.

All administrative rules are compiled by rule number in the “Michigan Administrative Code, 1979,” the “Annual Administrative Code Supplements,” and the “Michigan Register” that is issued monthly. These volumes should be available in most county law libraries. In addition, they may be accessed on the World Wide Web at:

www.state.mi.us/execoff/admincode/depart.htm.

In addition, administrative rules administered by the DNR may be found through the Department’s web site. Start at www.dnr.state.mi.us. Then click on “Divisions,” then “Law,” and then on “DNR Laws, Rules, and Regulations.”

Land Use Orders of the Director (Orders) are issued under the authority of section 504 of the NRERA. Orders are generally more location specific than rules, although some are statewide in scope. In order for an Order to be enforceable, the conduct prohibited by the Order must be posted. These Orders have been compiled, and the text of these Orders may be found through the Department’s web site as directed above.

4.8 Penalty Provisions in ORV Act

A. Misdemeanors and State Civil Infractions

The general rule, except as otherwise provided, is that a person who violates the ORV Act is guilty of a misdemeanor punishable by up to 90 days in jail and/or a fine of not less than \$50 or not more than \$1,000. MCL 324.81147(1); MSA 13A.81147(1).

Subsection (2) of the penalty statute then provides that the following offenses are state civil infraction punishable by a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2).

- §.81105—Failure to obtain title to ORV.
- §.81107—ORV dealer's failure to obtain certificate of origin for a new ORV.
- §.81115—Operation of unlicensed ORV.
- §.81116—Failure to obtain a license for an ORV.
- §.81121—ORV dealer's failure to maintain required amount of liability insurance for rental ORVs.
- §.81130—Obligation of persons under 16 years of age to complete a safety education course before operating an ORV.
- §.81133(b)—Failure to wear a crash helmet and protective eyewear.
- §.81133(c)—Operating without headlights and/or taillights from 1/2 hour after sunset until 1/2 hour before sunrise.
- §.81133(d)—Operating without a proper hand or foot braking system.
- §.81133(f)—Operating at a greater speed than that which is minimally required while the ORV is on frozen waters and is within 100 feet from a person, a fishing shanty or shelter, or an area that is cleared for skating purposes.
- §.81133(g)—Operating without a proper muffler and exhaust system.
- §.81133(h)—Operating at a greater speed than that which is minimally required while the ORV is within 100 feet of a dwelling.
- §.81133(j)—Operating in an area where public hunting is permitted during the hours of 7 a.m. and 11 a.m. or 2 p.m. to 5 p.m. during the regular November firearm deer season.
- §.81133(l)—Operating on or around a cemetery or burial ground, or on land used as an airport.
- §.81133(m)—Operating within 100 feet of a slide, ski, or skating area.

Most of these civil infractions are discussed in more detail in Part B of this Chapter.

In addition, Rule 299.331(j) provides that ORVs must be operated solely on designated trails, routes, and areas. A violation of this rule is a civil infraction. *See* MCL 324.504; MSA 13A.504.

B. Other Penalty Provisions

Subsections (4), (5), and (6) of the penalty statute contain special provisions regarding restoration of damaged land, impounding and seizure of ORVs by peace officers, and court orders authorizing the DNR to sell impounded ORVs. MCL 324.81147 (4), (5), and (6); MSA 13A.81147 (4), (5), and (6) state as follows:

“(4) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.”

“(5) The department or any other peace officer may impound the ORV of a person who violates a provision of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.”

“(6) Upon conviction of a person for violation of a provision of this part that is punishable as a misdemeanor or any other provision of this part that results in damage to the particular area in which the ORV was used, a court of competent jurisdiction may order an ORV and any personal property on the ORV seized as a result of the violation returned to the owner or upon recommendation of the local prosecuting attorney turned over to the department. If the ORV and any other property is turned over to the department, they shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use with the balance to be deposited in the ORV trail improvement fund.”

Part B—Traffic Offenses in the ORV Act

4.9 Titling Requirements

The ORV Act requires all ORVs to be titled with the Secretary of State's Office. *See* MCL 324.81103 and 324.81108; MSA 13A.81103 and 13A.81108. If the vehicle is used exclusively as an ORV, it must be titled pursuant to the requirements of the ORV Act. *Id.* However, if the vehicle is also sometimes driven on the highways, it must be titled pursuant to the requirements of the Vehicle Code. *See* MCL 324.81104; MSA 13A.81104. There is no exemption to the titling requirements for ORVs operated solely on private property.

A person who violates the titling requirements of the ORV Act is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100. MCL 324.81109(5); MSA 13A.81109(5).

The titling requirements apply to both purchasers of ORVs and to dealers who sell ORVs at retail. They are as follows:

“The purchase or other transferee of an ORV subject to the titling provisions of this part shall, except as provided in subsection (2), make application to the department of state for issuance of a certificate of title to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.” MCL 324.81109 (1); MSA 13A.81109(1).

“A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall make application for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the department of state. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.” MCL 324.81109(2); MSA 13A.81109(2).

Additional titling provisions within the ORV Act are as follows:

- §.81103 requires all ORVs purchased after April 1, 1991 to be titled with the Secretary of State.
- §.81104 requires ORVs that are also driven on public highways to be titled under the Michigan Vehicle Code, rather than the ORV Act.
- §.81105 provides that an owner shall not sell an ORV without delivering a certificate of title, and that a purchaser shall not purchase an ORV without obtaining such a certificate.

- §.81107 requires that dealers of ORVs obtain a manufacturers certificate of origin when they acquire a new ORV.
- §.81108 establishes the requirements for an application for an ORV certificate of title.
- §.81110 provides that an \$11.00 fee is required for processing an application for a certificate of title.

DNR Note: The ORV Act does not require Michigan titles for ORVs that are owned by out-of-state residents and operated in Michigan.

4.10 Licensing Requirements

In addition to its titling requirements (which are administered by the Secretary of State), the ORV Act also has licensing requirements, which are administered by the Department of Natural Resources. *See* MCL 324.8115; MSA 13A.81115. All ORVs that operate off highways, roadway, streets, and forest roads must be licensed with the Department of Natural Resources. *Id.* This includes both ORVs titled under the Vehicle Code and ORVs titled under the ORV Act. MCL 324.81102; MSA 13A.81102. The proceeds from the licensing fees collected by the DNR are used to fund the DNR's statewide ORV trail system and safety education programs. *See* MCL 324.81117 to .81119; MSA 13A.81117 to .81119.

A person who violates the licensing requirements of the ORV Act, as contained at MCL 324.81115 and .81116; MSA 13A.81115 and .81116, is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2). There are no driver's licenses required for operators of ORVs.*

MCL 324.81115; MSA 13A.81115 states a follows:

“(1) Beginning April 1, 1991, except as otherwise provided, an ORV shall not be operated on or over land, snow, ice, marsh, swampland, or other natural terrain unless licensed by the owner with the department or a dealer as provided in this part. Except as otherwise provided in this part, a vehicle operating on a forest trail or in a designated area shall be licensed under this part.

(2) Licensure is not required for an ORV used exclusively in a safety and training program as required in section 81129.”

*But see Section 4.14 for a summary of the statute that requires children under 16 to have an ORV safety certificate.

MCL 324.8116(1); MSA 13A.81116(1) provides that an applicant must pay a \$16.25 application fee for an ORV license and that the license is valid for a 12 month period.

MCL 324.81116(3); MSA 13A.81116(3) states that “the license shall be permanently attached to the vehicle in the manner prescribed and in the location designated by the department before the vehicle may legally be operated in accordance with this part.”

DNR Administrative Rule 257.1691 states that the license be displayed as follows:

“The registration decal for an off-road recreation vehicle shall be permanently attached to the vehicle and shall be visibly displayed in the following manner:

(a) For a 2-wheel vehicle, it shall be centered on the exposed surface of the rear fender.

(b) For a 3- or 4-wheel multitrack or multiwheeler vehicle, it shall be attached and visible on a flat metal surface, bumper, or plate permanently attached to the rear of the vehicle.

(c) For an amphibious machine, or a ground effect air-cushioned vehicle, it shall be centered on the rear thereof.”

Additional licensing provisions contained in the ORV Act are as follows:

- §.81102(2) states that “an ORV operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner is exempt from the licensure provisions of this part.”
- §§.81117 and .81118 provide that the proceeds from the licensing fees shall be used to pay for the ORV trail improvement fund and the safety education fund.

DNR Note: The ORV Act does require Michigan licenses for ORVs that are owned by out-of-state residents and operated on Michigan’s ORV trail system.

4.11 Equipment Requirements

Before an ORV may be operated on any property, the operator is responsible for the following equipment requirements, which are contained at MCL 324.81133; MSA 13A.81133. A person must not operate an ORV:

“(b) Unless the person and any passenger in or on the vehicle is wearing on his or her head a crash helmet and protective eyewear approved by the United States department of transportation. This subdivision does not apply if the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.”

“(c) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight.”

“(d) Unless equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible when the brake is activated to the rear of the vehicle when the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise;”

“(d) ... [unless equipped with] a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.”

“(g) Unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed... [see statute for detailed requirements for exhaust noise emissions.]”

A violation of any of these provisions is a state civil infraction punishable by a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2).

4.12 Operation of ORVs on Public Highways and Streets

The following offense is a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of not less than \$50 or more than \$1000. *See* MCL 324.81147(1); MSA 13A.81147(1).

*Section .81131 is the statutory provision that permits local governments to establish ORV access routes.

MCL 324.81122; MSA 13A.81122 states:

“1) A person shall not operate an ORV that is not registered under the code upon a public highway, street, or right-of-way of a public highway or street, except as provided in section 81131* or under the following conditions and circumstances:

(a) The operator of a vehicle may cross a public highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a public highway, and shall yield the right-of-way to oncoming traffic.

(b) A vehicle may be operated on a street or highway for a special event of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. A special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the department.

(c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on the extreme right side of a roadway or highway right-of-way when it is not practicable to operate off that roadway or highway right-of-way. Such operation shall be limited to traveling to or from the farmer's residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise, when visibility is substantially reduced due to weather conditions, or in a manner so as to interfere with traffic. ... An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the roadway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.”

4.13 Operation of ORVs in Places Where ORVs Are Prohibited

A. Misdemeanors

MCL 324.81133; MSA 13A.81133 includes five misdemeanors for operating ORVs in places where they are prohibited. A violation of these offenses is punishable by up to 90 days in jail and/or a fine of not less than \$50 or more than \$1,000. *See* MCL 324.81147(1); MSA 13A.81147(1). These locations are:

“(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the department other than game areas, state parks, or recreational areas where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.”

“(i) In or upon the lands of another without the written consent of the owner, owner's agent or lessee, when required by part 731 [Recreational Trespass Act]. ... Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.”

“(n) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as established in section 81127.”

“(o) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.”

*This offense is commonly cited by conservation officers when an ORV is operated in a closed area of the federal forest lands. See Section 4.5, *supra*.

“(r) In a manner contrary to operating regulations on public lands.”*

B. State Civil Infractions

MCL 324.81133(j), (l) and (m); MSA 13A.81133(j), (l) and (m), include three other locations where an ORV may not be operated. Violation of these offenses, however, is a state civil infraction punishable by a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2). These locations are:

“(j) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle, to remove a deer, elk, or bear from public land which has been taken under a valid license; or except for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations; or on property owned or under control of the operator or on which the operator is an invited guest. A hunter removing game pursuant to this subdivision shall be allowed to leave the designated trail or forest road only to retrieve the game and shall not exceed 5 miles per hour. A vehicle registered under the code is exempt from this subdivision while operating on a public highway or public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued pursuant to part 401, or a person with disabilities using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road, is exempt from this subdivision.”

“(l) On or across a cemetery or burial ground, or land used as an airport.”

“(m) Within 100 feet of a slide, ski, or skating area, unless the vehicle is used for purposes of servicing the area.”

C. DNR Rules

Rule 299.334(j) provides that it is unlawful for any person to “use or operate any wheeled, motorized vehicle except on forest roads, designated trails, designated routes, and in designated areas.”*

* See section 4.2 for definitions of these terms.

A person who violates this rule is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500. *See* MCL 324.504; MSA 13A.504.

4.14 Operation of ORVs by Children Under 16 Years of Age

MCL 324.81130(1) MSA 13A.81130(1), provides that:

“[a] person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the department of education. This course may include a written examination and a driving test designed to test the competency of the applicant. Upon successful completion of this safety education course, a person shall receive an ORV safety certificate.”

A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2).

MCL 324.81129; MSA 13A.81129 establishes additional restrictions on the operation of ORVs by minors. The seventeen subsections of section .81129 describe three different offenses, each of which may be committed by three different groups of persons. A violation of any of these offenses is a misdemeanor punishable by up to 90 days imprisonment, and/or a fine of not less than \$50 or more than \$1,000. *See* MCL 324.81147(1); MSA 13A.81147(1). The following chart summarizes these offenses.

Chart 4.14—Misdemeanor Offenses—Operation of ORVs by Minors

Persons Responsible	Prohibited Conduct	Statutory Reference
A parent or legal guardian of a child less than 16 years of age.	“[S]hall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate.”	MCL 324.81129(1); MSA 13A.81129(1).
A parent or legal guardian of a child less than 12 years of age.	“[S]hall not permit the child to operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”	MCL 324.81129(2); MSA 13A.81129(2) Note: This subsection does not apply to ATVs used in agricultural operations.

Chart 4.14—Misdemeanor Offenses—Operation of ORVs by Minors

Persons Responsible	Prohibited Conduct	Statutory Reference
A parent or legal guardian of a child less than 16 years of age.	“[S]hall not permit the child to operate a 3-wheeled ATV.”	MCL 324.81129(3); MSA 13A.81129(3)
The owner or person in charge of an ORV.	“[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate....”	MCL 324.81129(4); MSA 13A.81129(4)
The owner or person in charge of a 4-wheeled ATV.	“[S]hall not knowingly permit the vehicle to be operated by a child less than 12 years of age, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”	MCL 324.81129(5); MSA 13A.81129(5) Note: This subsection does not apply to ATVs used in agricultural operations.
The owner or person in charge of a 3-wheeled ATV.	“[S]hall not knowingly permit the vehicle to be operated by a child less than 16 years of age.”	MCL 324.81129(6); MSA 13A.81129(6)
A child who is less than 16 years of age.	Shall not operate an ORV “unless the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate....”	MCL 324.81129(12); MSA 13A.81129(12)
A child who is less than 12 years of age.	“[S]hall not operate a 4-wheeled ATV, unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child.”	MCL 324.81129(13); MSA 13A.81129(13) Note: This subsection does not apply to ATVs used in agricultural operations.
A child who is less than 16 years of age.	“[S]hall not operate a 3-wheeled ATV.”	MCL 324.81129(14); MSA 13A.81129(14)

4.15 Operation of ORVs in a Careless, Unsafe or Otherwise Prohibited Manner

The following seven offenses, contained at MCL 324.81133; MSA 13A.81133, are misdemeanors punishable by up to 90 days imprisonment and/or a fine of not less than \$50 and not more than \$1,000. *See* MCL 324.81147(1); MSA 13A.81147(1).

Section .81133 states that a person shall not operate an ORV:

“(a) At a rate of speed greater than is reasonable and proper, or in a careless manner having due regard for conditions then existing.”

“(k) While transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.”

“(p) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill a bird or animal, wild or domesticated.”

“(q) In a manner so as to leave behind litter or other debris.”

“(r) In a manner contrary to operating regulations on public lands.”*

“(s) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

(i) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

(ii) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.”

“(t) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.”

*This offense is commonly cited by conservation officers when an ORV is operated in a closed area of the federal forest lands. See Section 4.5, *supra*.

Also, it is a misdemeanor to refuse to stop an ORV at the direction of a law enforcement officer, or at the direction of a private land owner. *See* MCL 324.81146(1) and (2); MSA 13A.81146(1) and (2), which states as follows:

“(1) An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a law enforcement officer acting in the lawful performance of his or her duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform, and the officer’s vehicle shall be easily identifiable as an official law enforcement vehicle.”

“(2) The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner’s authorized agent, shall bring the vehicle to an immediate stop and provide personal identification. Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor.”

4.16 Operation of ORVs at a Greater Than Minimum Speed at Prohibited Locations

A. Misdemeanors

MCL 324.81133(u); MSA 13A.81133(u), states that a person shall not operate an ORV:

“(u) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on an ORV access route as authorized by local ordinance.”

MCL 324.81147(1); MSA 13A.81147(1), provides that a violation of §.81133(u) is a misdemeanor punishable by up to 90 days in jail and/or a fine of not less than \$50 or more than \$1000.

B. State Civil Infractions

MCL 324.81133(f) and (h); MSA 13A.81133(f) and (h), include two other locations where an ORV may not be operated at a rate of speed greater than the minimum required to maintain controlled forward movement. Violations of

these provisions, however, is a state civil infraction punishable by a civil fine of not more than \$500. *See* MCL 324.81147(2); MSA 13A.81147(2).

Section .81133(f) and (h) state that an ORV may not be operated:

“(f) On the frozen surface of public waters within 100 feet of a person not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.”

“(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator’s control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on an ORV access route as authorized by local ordinance.”

DNR Note: Section 81133 contains two subsections that appear very similar. Both subsections 81133(h) and 81133(u) prohibit the operation of ORVs within a specified distance from a dwelling. In the case of 81133(h), an ORV may not be operated within 100 feet of a dwelling unless certain criteria are met, and 81133(u) establishes this distance at 300 feet unless certain criteria are met.

Subsection 81133(u) was added in 1991. The legislative history behind this amendment is incomplete, however, it clearly seems that 81133(u) was intended to address the cross-country operation of ORVs in areas zoned residential. Unlike 81133(h), the prohibition applied in 81133(u) does not exempt operation on a person’s own private property. In fact, it is specifically targeted at the operation of ORVs on adjacent private property.

4.17 Operation of ORVs While Intoxicated or Impaired

A. Introduction

The statutory provisions dealing with operating an ORV while intoxicated or impaired are contained at MCL 324.81134 to .81141; MSA 13A.81134 to .81141. They are:

- §.81134—Elements and penalties for OUIL 1st, 2nd, and 3rd offense.
- §.81135—Elements and penalties for impaired driving, 1st and 2nd offense.

- §.81136—Procedures for administering chemical tests of blood, breath, or urine.
- §.81137—Implied consent provisions requiring operators to submit to chemical tests of blood, breath, or urine.
- §.81138—Required reports to Secretary of State when operators refuse to submit to chemical tests.
- §.81139—Required notice of person’s right to request an administrative hearing.
- §.81140—Procedures at administrative hearings to decide whether a person’s right to operate an ORV should be suspended.
- §.81141—Peace officer’s right to order a person to submit to a preliminary chemical breath analysis test.

*See also section 4.15, *supra* for the offense of transporting or possessing open intoxicants in an ORV.

Most of these statutory sections will be discussed in more detail in the following subsections.*

B. Operating an ORV While Under the Influence of an Intoxicating Liquor or Controlled Substance

MCL 324.81134(1) to (3); MSA 13A.81134(1) to (3) state that the following three offenses are in violation of the ORV Act:

“(1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by section 7104 of the public health code, ... or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.”

*This is commonly referred to as a “per se” violation, or operating with an unlawful blood alcohol level (UBAL).

“(2) A person who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate an ORV.”*

“(3) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.”

MCL 324.81134(4) to (6); MSA 13A.81134(4) to (6), state that the following penalties apply to first, second, and third offenses:

“(4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days,* or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution. As part of the sentence for a violation of subsection (1) or (2), the court shall order the person convicted not to operate an ORV for a period of not less than 6 months or more than 2 years.”

*Beginning October 1, 2000, this maximum term of imprisonment will be increased to 93 days. See 1999 PA 22.

“(5) On a second conviction under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2) within a period of 7 years, a person is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.”

“(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), a person is guilty of a felony. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.”

MCL 324.81134(7) and (8); MSA 13A.81134 (7) and (8), were added to the ORV Act by 1998 PA 355, effective October 1, 1999. These two statutory subsections create the following new offenses:

- §.81134(7)—Operating an ORV while intoxicated and causing the death of another person; punishable by up to 15 years imprisonment and/or a fine of not less than \$2,500 or more than \$10,000.
- §.81134(8)—Operating an ORV while intoxicated and causing a serious impairment of a body function of another person; punishable by up to 5 years imprisonment, and/or a fine of not less than \$1,000 or more than \$5,000.

The remaining subsections in MCL 324.81134; MSA 13A.81134, deal with sentencing and guilty plea requirements. They are:

- §.81134(9)—A person convicted of subsection (1) or (2) may be ordered to perform up to 12 days of community service.
- §.81134(10)—A person convicted of subsection (1) or (2) must be ordered to undergo a screening assessment to determine whether he or she is likely to benefit from rehabilitation services.

- §.81134(11)—Before accepting a guilty plea, the court must advise the accused of “the statutory consequences possible as a result of a plea of guilty in respect to the person’s right to operate an ORV and the penalty imposed for violation of this section.”

DNR Note: Beginning on October 1, 2000, the operator of an ORV who is convicted of operating the ORV while under the influence of alcohol and/or a controlled substance, or who is convicted of operating with an unlawful blood alcohol level will have 6 points assessed against his or her driver’s license. *See* 1999 PA 21, amending MCL 257.320a(1)(b); MSA 9.2020(1)(1)(b), effective October 1, 2000. Further, effective on October 1, 2000 each municipal judge and each clerk of a court of record shall submit an abstract of each case involving a violation of section 81134 to the Secretary of State. MCL 324.81134(12); MSA 13A.81134(12).

C. Case Law Interpreting the OUIL Provisions in the ORV Act

In *People v O’Neal*, 198 Mich App 118 (1993), the Court of Appeals was asked to interpret the relationship between the OUIL provisions in the ORV Act and the OUIL provisions in the Vehicle Code. The defendant in *O’Neal* was charged with OUIL third offense under the Vehicle Code. The prosecutor chose to proceed under the Vehicle Code (rather than the ORV Act) because defendant was operating his ORV on a public road at the time of his arrest.

In affirming the defendant’s conviction, the Court of Appeals said that the purposes of both statutes are promoted by holding that an intoxicated person operating an ORV on the highway can be charged with OUIL under the Vehicle Code. *Id* at 122.

D. Operating an ORV While Visibly Impaired

MCL 324.81135(1); MSA 13A.81135(1), provides that a person shall not operate an ORV if, due to the consumption of an intoxicating liquor or a controlled substance, the person has visibly impaired his or her ability to operate the ORV.

The penalty for a first offense of operating an ORV while impaired is up to 90 days in jail* and/or a fine of not more than \$300. MCL 324.81135(2); MSA 13A.81135(2). As part of the sentence, the court shall order that the person not operate an ORV for not less than 90 days or more than one year. *Id*.

The penalty for a second offense of operating an ORV while impaired is up to 1 year in jail and/or a fine of not more than \$1,000. MCL 324.81135(3); MSA 13A.81135(3). If the person has only one prior conviction (within 7 years) under this subsection, the court shall order that the person not operate an ORV

*Beginning October 1, 2000, this maximum term of imprisonment will be increased to 93 days. See 1999 PA 22.

for a period of not less than 6 months or more than 18 months. *Id.* If the person has two or more prior convictions (within 10 years) under this subsection, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years. *Id.*

The remaining subsections in MCL 324.81135; MSA 13A.81135, deal with sentencing requirements and guilty plea requirements. They are:

- §.81135(4)—A person convicted of operating an ORV while impaired may be ordered to perform up to 12 days of community service
- §.81135(5)—A person convicted of operating an ORV while impaired must be ordered to undergo a screening assessment to determine whether he or she is likely to benefit from rehabilitative services.
- §.81135(6)—Before accepting a guilty plea, the court must advise the accused of “the statutory consequences possible as a result of a plea of guilty in respect to the person’s right to operate an ORV and the penalty imposed for violation of this section.”

DNR Note: Beginning on October 1, 2000, the operator of an ORV who is convicted of operating an ORV while visibly impaired by the use of alcohol and/or a controlled substance will have 4 points assessed against his or her license. *See* 1999 PA 21, amending MCL 257.320a(1)(f); MSA 9.2020(1)(1)(f), effective October 1, 2000. Further, effective on October 1, 2000, each municipal judge and each clerk of a court of record shall submit an abstract of each case involving a violation of section 81135 to the Secretary of State. MCL 324.81135(7); MSA 13A.81135(7).

E. Statutory Presumptions Following Chemical Tests of Blood, Urine, or Breath

MCL 324.81136; MSA 13A.81136, is the statutory presumption section of the ORV Act. It applies to all of the ORV drinking and driving offenses, except the “per se” offense that is contained at §.81134(2).*

These presumptions are as follows:

- §.81136(3)(a)—If the operator had a blood alcohol content of .07 or less, it shall be presumed that he or she was not under the influence of intoxicating liquor.
- §.81136(3)(b)—If the operator had a blood alcohol content of more than .07 but less than .10, it shall be presumed that his or her ability to operate the ORV was visibly impaired.

* See Section 5.17(B), *supra* for a summary of §.81134(2).

- §.81136(3)(c)—If the operator had a blood alcohol content of .10 or more, it shall be presumed that he or she was under the influence of intoxicating liquor.

F. Suspension of Operating Privileges for Refusing to Submit to a Chemical Test

MCL 324.81138 to .81140; MSA 13A.81138 to .81140, are the statutory sections dealing with the administrative hearing requirements following a person's refusal to submit to a chemical test of his or her blood, urine, or breath.

MCL 324.81140(1) and (4); MSA 13A.81140(1) and (4), provide that if a person unreasonably refuses to submit to a chemical test, the Secretary of State shall suspend that person's right to operate an ORV for the following periods of time:

- 6 months for the first refusal.
- 1 year for a second or subsequent refusal within 7 years.

G. Jury Instructions Following a Person's Refusal to Submit to a Chemical Test

MCL 324.81136(8); MSA 13A.81136(8), states that the following jury instructions shall be given if requested by the prosecutor or defendant:

“Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant's guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant.”

H. State Civil Infractions for Refusing to Submit to a Preliminary Chemical Breath Analysis Test

MCL 324.81141(5); MSA 13A.81141(5), provides that a person who refuses to submit to a preliminary chemical breath analysis test (PBT) upon request of a police officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.

The results of a PBT shall be admissible as evidence solely to assist the court in determining a challenge to the validity of an arrest. MCL 324.81141(3); 13A.81141(3).

4.18 Operation of ORVs After Operating Privileges Have Been Suspended

MCL 324.81142; MSA 13A.81142, provides that a person who operates an ORV while his or her right to operate has been suspended shall be guilty of a misdemeanor punishable by up to 90 days imprisonment and/or a fine of not more than \$1,000.

Beginning on October 1, 2000, a person who has had his or her driver's license suspended under the Michigan Vehicle Code or under his or her state of residence shall not operate an ORV during the period of that suspension. *See* MCL 324.81140a; MSA 13A.81140a, effective October 1, 2000.

Note: A person's right to operate an ORV may be suspended by the court as part of a sentence for a drinking and driving offense, or by the Secretary of State as a result of a person's refusal to submit to a chemical test. *See* Sections 4.17(B), (D), and (F), *supra*.

Part C Michigan's Off-Road Vehicle Guide, reprinted with permission from the Michigan Department of Natural Resources

Off-road Vehicle Definitions

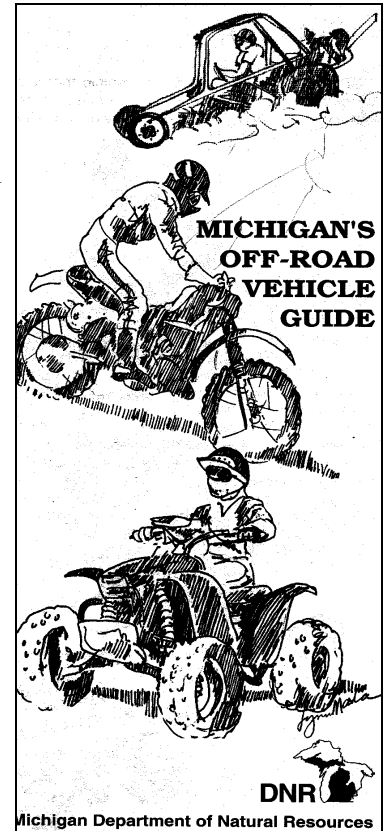
An **ORV** is defined as any motor vehicle that can be operated cross-country without the benefit of a road or trail over land, snow, and other natural terrain, and includes all of the following:

Multi-track and multi-wheeled vehicles, ATVs, motorcycles and related 2, 3, and 4-wheeled vehicles, amphibious machines (water to land, and back), hovercraft, and any other vehicles that use mechanical power, including 2 and 4-wheel drive vehicles that are highway registered, when operated off highways and roads.

ATVs are a subgroup of ORVs.

An **ATV** is defined as:

a 3 or 4-wheeled vehicle that is designed for off-road use, that has low-pressure (balloon-type) tires, with a seat that is designed to be straddled by the operator, powered by an engine in size from 50 cc on up to 500 cc displacement.



There are specific exemptions from this list.

The following are **not ORVs**:

registered snowmobiles; farm, construction and logging vehicles when being used in usual work practices; military, fire, emergency and law enforcement vehicles.

Titling and Licensing

Owner's of ORVs are required to:

FIRST: obtain a title for an ORV through the Secretary of State (SOS);

Note: A Michigan title is NOT required on nonresident ORVs used in Michigan.

SECOND: license the ORV with the Department of Natural Resources (DNR).

Every ORV sold through a dealer will be accompanied by a certificate of origin. This certificate of origin contains all the information needed for applying for a certificate of title and an ORV license. The application for a title is made to SOS, and the fee for processing is \$11.00. When an ORV is purchased through a dealer,

application for title will be made by the dealer on behalf of the buyer. **Application for a title must be made within 15 days of purchase by:**

- the dealer, if it is an ORV sold by the dealer;
- the buyer, if the ORV is purchased from other than a dealer.

Any time an ORV is sold to another person, the certificate of title must also be transferred to the buyer. It is **unlawful** to:

- sell or transfer an ORV without transferring the title;
- purchase or acquire an ORV without obtaining a title.

The DNR licenses all ORVs on an annual basis.

The fee is \$16.25.

Licenses are valid from April 1 through March 31 of the following year, regardless of the date of purchase. Vehicles licensed under the Motor Vehicle Code as street vehicles require an ORV license only at such time as they are being used as an ORV. A “street licensed” vehicle does not need an ORV license to use forest roads, but will if used on designated trails and if used in designated areas for cross-country use.

Note: An ORV license is NOT required for street licensed vehicles used on the frozen surface of public waters.

Private land owners and invited guests are not required to license ORVS operated exclusively on their private property. Licensing is required of both resident and non-resident ORVs used in areas open to public operation.

ORV licenses are available from the DNR by mail, at selected DNR offices, and through participating ORV dealers and participating hunting and fishing license agents. Dealers may purchase licenses from the DNR for resale to ORV buyers.

For purchase by mail, contact:
Michigan Department of Natural Resources
License Control-ORV
Box 30181
Lansing, MI 48909
Telephone: 517 335 3272

Display of License

It is unlawful to operate an ORV without having a valid license permanently attached and visibly displayed on the vehicle in the following manner:



- on a 2-wheeled vehicle, centered on exposed rear fender;
- 3 or 4 wheeled vehicle (ATVs), on flat metal surface, bumper, or plate permanently attached to rear of ORV;
- other ORVs, including dune buggies and 4 w/d trucks, centered and visible on rear of the vehicle.

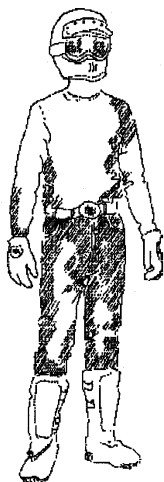
Equipment

Before an ORV may be operated on **any property**, the operator is responsible for the following equipment:

A. ORV operators and all passengers **must** wear a U.S. DOT approved crash helmet AND protective eyewear or goggles EXCEPT when the ORV is equipped with an approved roof AND the operator and passengers are wearing properly adjusted and fastened safety belts.

B. The ORV must have:

- A braking system in good working condition that operates by either hand or foot;
- A throttle system designed to automatically and immediately return the engine speed to idle when pressure is released;
- A U.S. Forest Service approved spark arrester and muffler, in good working condition and in constant operation, meeting applicable sound level standards.
- Designed, manufactured accommodations for seating each passenger;
- If operated during the hours of 1/2 hour after sunset to 1/2 hour before sunrise must also have and display all the following:
 - a lighted headlight
 - a lighted taillight
 - a brake light, brighter than the tail light.



Other equipment that is highly recommended for operators and passengers is:

- a long-sleeved shirt or jacket of durable material;
- a chest protector, for chest and shoulder protection;
- a kidney or riding belt, for lower back support;
- sturdy gloves that provide hand and finger protection and improved grip on the controls;
- knee and elbow pads;
- denim or other heavy material pants;
- heavy leather boots, for ankle and foot protection.

Safety Education and Training

ORV safety training should be considered a “**must**” for all ORV operators. The dynamics of ORVs (especially ATVs) while in motion can be deceiving, and the sharing of forest roads with natural hazards and other vehicles can present some sudden decisions to the ORV operator.

The Michigan Department of Education (DOE) administers the ORV safety training and certification program.

The ORV safety training program includes hands on instruction in safe and responsible ORV operation, familiarization with regulations and a written exam. It may also include a driver/operator competency exam.

Information on course availability can be obtained by calling 1-800-887-2887 (please check time zone as the 800 number is located in California) for ATV safety courses, 517-569-9999 for off-highway motorcycle (OHM) safety courses or DOE at 517-373-0763. **Check with DNR Parks and Recreation Division for special youth requirements at Silver Lake State Park (517) 373-1270.** You will receive the phone number of the person responsible for scheduling training in your area. There may be a cost for the class. This cost should not exceed \$25.00.

All operators less than 16 are required to have an ORV safety certificate on his or her person, available to present upon demand of a law enforcement officer.

Land Use Rules

Indiscriminate ORV use has damaged fragile ecosystems on both public and private lands. Complaints of erosion on hills and trails, destruction of stream banks and beds, and conflicts with other users have led to more restrictive rules to control ORV abuses. For the future of their sport, as well as the future of the resource, ORV users must not only know and closely follow the operating regulations, but also encourage others to do likewise. Violations of these and other rules should be reported immediately to the nearest

DNR office, or to the DNR Law Enforcement **“Report All Poaching”** hotline: 1-800-292-7800 (NOT an information number).

Operation on State-owned Lands

The DNR administers over 4 million acres of land for a variety of purposes. Wise use of those lands includes preserving natural features and wildlife habitat, and encouraging a variety of recreational uses. Just as other users are limited in their activities to protect and conserve these vital resources while minimizing conflicts with other activities, ORV enthusiasts are restricted in where and how they may operate. Definitions which define where and how ORVs may be operated on State Forest Lands include:

“Forest road” Forest roads are hard surfaced roads, gravel and dirt roads, and other routes that can be traveled by a conventional 2-wheel drive vehicle designed for highway use (passenger car), including fire lanes and logging roads. **“Forest road” does NOT include any state, federal, or county highways or roads.** In general, forest road means a road OTHER THAN A COUNTY OR STATE ROAD that the family car can operate on without assistance.

Definitions which define where and how ORVs may be operated on State Forest Lands include:

“Designated” means posted **OPEN** for ORV use with appropriate signs.

“Designated Route” means a forest or county road which has been signed for ORV use by the DNR. For ORVs of all sizes. Either ORV or SOS conventional licensing is required.

“Designated Area” means an area that is signed for cross-country ORV use by the DNR. ORV license is required.

“Forest Trail” Forest trails are designated paths or ways that can only be traveled by vehicles that are less than 50” in width. ORV license is required.

Signs you may see on State roads, trails and routes:



CYCLE TRAILS
For Motorcycles
DNR License
Required



ATV TRAILS
For ATVs and
Motorcycles
DNR License
Required



MICH. CROSS
COUNTRY CYCLE
TRAIL
For Motorcycles
Sections Require
DNR License and
Sec. of State
License



ORV ROUTES
For ORVs of
All Sizes
DNR License
Required, Unless
Licensed by
Sec. of State

ORV Operation On State Owned Lands:

State Parks and State Recreation Areas, administered by the Parks and Recreation Division, with posted (signed) boundaries identifying them as such.

ORV operation is prohibited, except in designated areas of Silver Lake State Park.

State Game Areas, managed by Wildlife Division, with posted boundaries identifying them;

ALL motorized vehicle operation is prohibited except on established roads open to the public. ORVs are specifically prohibited. These are primarily found in the southern third

State Forest Lands, generally administered by Forest Management Division,

Upper Peninsula

ORV operation is permitted on designated trails and forest roads in the Upper Peninsula unless posted closed.

Lower Peninsula

In the Lower Peninsula, ORV operation is permitted on all “Designated Trails”, “Designated Areas”, and “Designated Routes” (Forest Roads which are posted open).

Statewide

ORV use on designated trails are limited to vehicles 50 inches or less in width. Off-trail or off-route operation outside of a designated area is prohibited except for licensed hunters to remove deer, bear and elk at speeds of 5mph or less.

Cross-country ORV operation on state-owned lands is permitted only on designated areas at Silver Lake State Park in Oceana County, at the St. Helen Motorsport Area in Roscommon County and at Black Mountain designated area in Cheboygan and Presque Isle Counties (Black Mountain designated area is restricted to ORVs 50” or less in width). Other designated areas may be developed in the future.

ORV Operation On National Forest Lands

Huron-Manistee National Forests

The Huron-Manistee National Forests’ ORV policy is “closed unless posted open” for all riders on all trails. Motorized vehicles that are licensed as ORVs can operate on trails, roads and areas which are designated and signed for their use. All National Forest roads are open to all “street legal” vehicles, unless posted closed.

Contact the Huron-Manistee National Forest for more information call: 1-800-821-6263.

Hiawatha National Forests

On the Hiawatha National Forest, all roads marked with a vertically numbered sign post are open to ORV use unless posted closed. All roads marked with a horizontally numbered sign post are closed unless posted open.

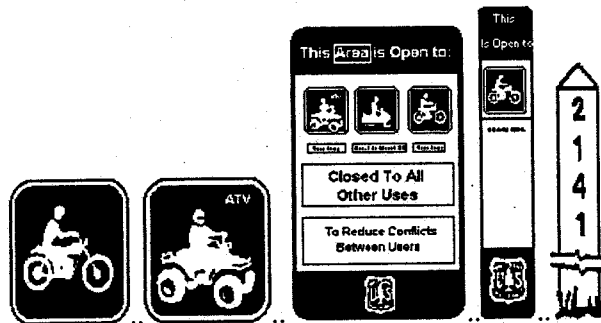
Contact the Hiawatha National Forest for specific areas closed to ORV use, maps and additional information call 1-906-786-4062.

Ottawa National Forest

On the Ottawa National Forest, all roads marked with a vertically numbered sign post are open to ORV use unless posted closed. All roads marked with a horizontally numbered sign post are closed unless posted open. All trails are open to ORV use except for designated wilderness and semi-private non-motorized areas, designated footpath only trail systems and other areas posted closed.

Contact the Ottawa National Forest for information and special management area restrictions at 1-906-932-1330.

Signs you may see on National forest trails:



ORV Operation On Other Lands

Roads, streets and highways maintained for year-round automobile travel are closed to ORV operation, including the shoulder and right-of-way (entire width between boundary lines of public ways maintained for vehicular travel). However, ORVs registered as motor vehicles by the Secretary of State may be operated on the roadway.

An ORV NOT licensed for highway use may not be operated on the roadway, shoulder or right-of-way of a state, federal or county road.

Private land is closed to ORV operation except for the landowner, and invited guests with permission.

The failure of a landowner to post or fence private property against ORV use does NOT imply consent to ORV operation.

ORV operation is permitted on the ice of public waters, but an ORV may not be operated within 100' of:

- another person;
- an ice fishing shanty;
- an area cleared for ice skating;

UNLESS the ORV is being operated at the minimum speed necessary for controlled forward movement.

An ORV may not be operated in a manner that creates an erosive condition. Michigan's soils and shorelines are fragile, and ORV operation in these areas and along stream banks and other waterways is restricted. It is unlawful to operate any ORV in or on the waters of any stream, river, marsh, bog, wetland or quagmire.

Accidents

The operator of an ORV involved in an accident resulting in injury to a person must stop immediately at the scene and render assistance.

The operator of an ORV involved in an accident resulting in injury to a person or in property damage in an estimated amount of \$100.00 or more must immediately notify the State Police or Sheriff's office of the county in which the accident occurred for completion of the accident report required by law.

Penalties

Criminal penalties can range from a minimum of \$50 to a maximum of \$1000 plus imprisonment up to 90 days. Civil penalties can range up to \$500. Persons may be held responsible for damage caused by their ORV and ordered to restore such damaged property to the original condition. Additional penalties for operating an ORV under the influence of alcohol or controlled substances can be imposed which are more severe. Serious criminal violations may also result in seizure and condemnation of the ORV.

Persons with Disabilities

Persons who have been issued either a SOS handicap license plate or placard, a DNR permit to hunt from a standing vehicle or who possess a completed DNR affidavit certifying the individual is handicapped (Must be countersigned by a licensed physician.) may operate a licensed ORV on state forest roads and on designated trails. Such persons are exempt from the quiet hours during the November firearm deer season if using their ORVs in conjunction with hunting or fishing. The ORV handicap affidavits and hunt from standing vehicle permits must be available for inspection by a law enforcement officer. Permit applications and affidavits are available from all DNR offices listed on trails map.

Sound Emission

Excessive noise is a common complaint made against ORV users. All ORVs must have, in good working condition and in constant use, a muffler which will meet or exceed all sound emission standards set by state law. Exhaust noise shall not exceed 99 Db(A) or 94 Db(A) on vehicles manufactured after January 1, 1986 when tested according to the provisions of the SAE J1287, June 86 test. Users should replace all worn or damaged exhaust systems with a quality muffler. (Moto-cross motorcycles are designed for closed course competition and not for recreational riding. These vehicles must be modified before operating on public trails, routes or land.)

Alcohol

ORV riding, like any other activity involving a motor vehicle, demands the full attention of the operator. This is reflected in the rules regarding alcohol use while operating an ORV, which are virtually identical to the laws regarding alcohol in the motor vehicle code. Open containers of alcoholic beverages may not be transported in or upon an ORV unless in a trunk or compartment separate from the passenger compartment of the vehicle. An ORV operator is considered to have given implied consent to chemical tests of blood, breath or urine for blood alcohol levels, and a statutory presumption of intoxication exists for a person with 0.10% blood alcohol level.

Other Operation Regulations

An ORV operator must stop upon signal of a law enforcement officer.

On private property, an ORV operator must stop upon signal of a landowner.

In addition to restrictions on state-owned lands and other violations previously noted, the following acts are unlawful anywhere in the state, except as noted.

ORV operation is prohibited:

- in any forest nursery or planting area;
- on a DNR dedicated natural area;
- in any area in a manner to injure, damage or destroy crops or trees;
- in any area in a manner so as to create an erosive condition;
- within 100' of a dwelling at a speed greater than the minimum speed necessary for
- controlled forward movement, except:
 - on private property;
 - on designated routes, trails, areas or access routes;

- on lands of another without permission;
- within 100' of a slide, ski or skating area;
- on a Dnr designated snowmobile trail located in the Lower Peninsula unless it is also designated for ORV use;
- on any operational or non-abandoned railroad right-of-way (except to cross at designated railroad crossing);
- in or upon the waters of any stream, river, bog, wetland, marsh or quagmire;
- in public hunting areas during the November firearm deer season, between the hours of 7:00 AM and 11:00 AM, and 2:00 PM and 5:00 PM, except for:
 - going to or from a residence or hunting camp that is inaccessible by a conventional vehicle (subject to state land regulations);
 - on private property, with landowner's permission;
 - passenger vehicles while being operated on roads capable of sustaining automobile traffic;
 - a person holding a Permit to Hunt From a Standing Vehicle or other persons meeting disabled requirements (p. 17) while engaged in hunting or fishing activity.
- on any public highway, street, or right-of-way, except:
 - to cross at right angles, after a complete stop (not on limited access freeways);
 - for ORVs also registered as motor vehicles under the Michigan Vehicle Code;
 - in a special event held under a government permit.
- at a rate of speed greater than that which is reasonable and proper;
- in a careless manner without due regard for existing conditions;
- in a manner to leave litter or debris;
- in hunting, pursuing or worrying any animal;
- while transporting a strung, uncased bow, or an uncased or loaded firearm;
- while transporting or possessing an alcoholic beverage that is open or uncapped (seal has been broken);
- while under the influence of alcohol or a controlled substance;
- while visibly impaired due to alcohol or a controlled substance;
- while transporting a passenger without a seat as designed by the manufacturer;

- while under a court suspension of ORV operating rights;
- on any unlicensed ORV.

General Responsibilities

Minimum ages for ORV/ATV operation are the results of an extensive review by the Michigan Legislature. The hearing process caused everyone to focus on the alarming statistics regarding young riders. Statistics show that in 41 percent of the deaths the victim was under the age of 16 years of age. Additionally, other young victims were left paralyzed, brain damaged or with other serious permanent injuries. Most of the accidents involving young riders could be traced to a number of factors, i.e.; lack of supervision; machine design characteristics; and lack of training. Some parents appeared to be unaware of many of these hazards. The consequences of a few daring moments on an ATV can be devastating as evidenced by the accident data.

Preserving and enhancing public safety in the field of outdoor recreation is of paramount importance. Recognizing that there are potential safety hazards in off-road vehicle riding, the legislature has enacted regulations which directly affect:

- operation of ORVs by children under 16;
- safety equipment that is required of all ORV operators and passengers;
- strict controls on the use and possession of alcohol while operating ORVs;
- unlawful operation on roads open to regular vehicle traffic.

There are certain responsibilities that come with the ownership and operation of an ORV. Adults bear the burdens of passing on responsible conservation and outdoor ethics to young operators under their supervision, and setting the example for all other ORV enthusiasts. It is important to consider the potential impact of ORVs on Michigan's fragile environment, and to operate ORVs in a manner that minimizes conflicts with others who are enjoying the fields and forests of the state.

Michigan's conservation officers will play an important role in ensuring ORV recreational opportunities are available for safe and responsible users. They accomplish this through aggressive enforcement and a continued willingness to respond to public concerns. They are an important bridge between the ORV users and the non-riding public. Use them and assist them to ensure the future of ORV recreation.

Tread Lightly

As an Off Road Vehicle user, it is your responsibility to "TREAD LIGHTLY" and to protect Michigan's fragile environment.

- Obtain Maps and rules from the Michigan Department of Natural Resources, Forest Service, ORV dealerships, or clubs. Learn the rules and follow them.

- Attend an ORV class. If qualified, volunteer to teach one and pass on your skills to new riders.
- Avoid running over young trees, shrubs and grasses damaging or killing them.
- Stay off soft, wet trails readily torn up by vehicles. Repairing damage is expensive.
- Travel around meadows, steep hillsides, or stream-banks and lakeshores easily scarred by churning wheels.
- Resist the urge to pioneer a new road or trail, or to cut across a switchback. Cross country operation is unlawful except in designated areas.
- Stay away from wild animals that are rearing young or suffering from food shortage. Stress can sap scarce energy reserves.
- Obey gate closures and regulatory signs. Vandalism cost tax dollars and reduces trail riding opportunities.
- Respect wilderness and other non-motorized areas. They are closed to all vehicles. Know where the boundaries are.
- Respect landowner rights. Be a good neighbor.
- Thumbs down on sound! Loud noise in the forest setting is offensive. Maintain stock mufflers.
- Spark arresters are a hot idea and mandatory. They prevent hot particles of carbon and soot from escaping the vehicle and starting forest fires.
- Courtesy and respect for other trail users is a matter of safety and treading lightly. Yield the right of way.

Advisory

Michigan's ORV trails and routes are designed for two-way travel. Users need to always be alert for on-coming traffic. Single track trails are designed for motorcycles and ATVs and are recommended for **ADVANCED RIDERS ONLY**. Be alert at all times when riding on designated routes for other vehicles including automobiles and trucks. Drivers of larger vehicles, all too often, fail to notice smaller motorcycles and ATVs.

Other Advice

Always make sure your ORV is in good operating condition. Check gas level before riding. In an hour, riders can travel farther than they can walk in eight. Don't forget your tools, trail maps, a first aid kit and a compass. Always ride with a companion. Know your local emergency telephone numbers before you ride.

Be Careful, Stay Alert and Ride Responsibly

Additional Information Can Be Obtained From the Following:

Dept. of Natural Resources
Law Enforcement Division
PO Box 30031
Lansing, MI 48909-7531
(517) 373-1230
TDD (517) 373-1079

Dept. of Natural Resources
Forest Management Div.
PO Box 30452
Lansing, MI 48909-7952
(517) 373-1275
TTY (517) 241-2683

The Michigan Department of Natural Resources, (MDNR) provides equal opportunities for employment and for access to Michigan's natural resources. State and Federal laws prohibit discrimination on the basis of race, color, sex, national origin, religion, disability, age, marital status, height and weight. If you believe that you have been discriminated against in any program, activity or facility, please write the MDNR Equal Opportunity Office, P.O. Box 30028, Lansing.